Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1993

WILLIAM A. GRABLE,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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Attorney for Petitioner

53pp

QUESTIONS PRESENTED

1) This Petition for Writ of Certiorari is requested under Rule 10.1.(a) and Rule 10.1.(c) of the Rules of the Supreme Court of the United States. The Opinion of the United States Court of Appeals for the Fifth Circuit is contrary to previous rulings of United States District Courts in the following cases:

a.) Loman v. United States, 243 F2d 327 (8 Cir., 1957);

b.) United States v. Mercer, 133F.Supp. (N.D. Cal., 1955);

c.) United States v. Franklin, 586 F2d 560 (5th Cir., 1979);

d.) United States v. Roselli, 432 F2d 879, *cert. denied*, 401 US 924, 91 S.Ct. 883, 27 L.Ed. 2d 828 (9th Cir., 1971);

e.) United States v. Judd, 889 F2d 1410 (5th Cir., 1989), *cert. denied* 110 S.Ct. 1494, 494 US 1036, 108 L.Ed. 2d 629 (5th Cir., 1989);

f.) United States v. Scoratow, 434 F2d 1288 (5th Cir., 1970).

2) The imposition of sentence herein according to the Federal Sentencing Guidelines should be calculated by deducting the value of the non-conforming goods which were delivered to the complainant in determining a proper enhancement of sentence under Section 2F1.1(b) of those guidelines and this issue is an important question of federal law which should be, but has not, been settled by this Court.

PARTIES DISCLOSURE STATEMENT

William Grable, Petitioner, furnishes the following list in accordance with the Rules of the Supreme Court of the United States Rule 14.1(b):

William Grable, Defendant; and

Richard L. Durbin, Jr., United States Attorney for the Western District of Texas.

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IN THE SUPREME COURT
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NO. _____

October Term, 1993

WILLIAM GRABLE,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the decision and order of the United Sates Court of Appeals for the Ninth Circuit entered in the above-entitled case on December 30, 1993. Order Denying Petition for Rehearing entered on January 24, 1994.

OPINIONS BELOW

The opinion of the United States Court of Appeals dated December 30, 1993, affirming conviction on jury trial of January 19 and 20, 1993, in the United States District Court for the Western District of Texas.

JURISDICTION

The order and decision of denial of Petition for Rehearing by the United States Court of Appeals for the Fifth Circuit was entered on January 24, 1993. Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

STATUTES INVOLVED

Rule 10.1(a) and (c) of the Supreme Court Rules provides:

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision...

...(c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court..

STATEMENT OF THE CASE

The Defendant, Grable, acts as a broker of oil field equipment and sold to the complainant, J.D. Sumral, a piece of equipment known as a 640 pumping unit but, according to the jury verdict, delivered a different unit which is known as a 456 pumping unit. The transaction was handled by telephone with the complainant transferring by wire transfer the funds from Texas to the Defendant's bank in Montana and the equipment being subsequently delivered to Texas. The difference in value between the two pieces of equipment is SEVEN THOUSAND DOLLARS ($7,000.00) according to the complainant's testimony, and the complainant did ultimately sell that 456 pumping unit for more than the purchase price paid for the 640

pumping unit.

An Indictment filed on September 10, 1992, charged the Defendant with a violation of 18 U.S.C. Section 2314 and alleged that the Defendant did "unlawfully cause to be transmitted in interstate commerce from Midland, Texas, to Red Lodge, Montana, money. . .". A Superseding Indictment was filed on October 15, 1992, adding a second Count alleging that the Defendant failed to appear on September 21, 1992, for his initial appearance and arraignment under the preceding indictment. See Excerpts, page 15. A third indictment, also denominated "Superseding Indictment", was filed on November 19, 1992, and this final indictment likewise alleged "interstate transportation money by fraud" under 18 U.S.C. Section 2314

and failure to appear. See Excerpts, page 17. The prosecutor moved to dismiss Count Two prior to the commencement of trial and that Motion was granted. The superseding indictment of November 19, 1992, and the case proceeded to trial on January 19 and 20, 1993.

Sentencing was scheduled for April 14, 1993, and the Defendant was sentenced to a prison term of TWENTY-ONE (21) months, ordered to pay restitution in the amount of TWENTY-SIX THOUSAND DOLLARS ($26,000.00) and directed to pay the FIFTY DOLLAR ($50.00) special assessment to the Crime Victims Fund. A Notice of Appeal was duly filed and the Fifth Circuit Court of Appeals affirmed the conviction and remanded for re-sentencing based on the error of the

District Court in calculating the sentence under the Federal Sentencing Guidelines.

The Defendant was re-sentenced by the United States District Court in accordance with the order of the Fifth Circuit Court of Appeals and subsequently filed a Petition for Rehearing on the issue of sentencing and that Petition was denied.

REASONS FOR GRANTING THE WRIT

The government has failed to satisfy the requirement of 18 U.S.C. Section 2314 that money must have been stolen before it is transported interstate commerce, has failed to show that it was transported by the Defendant or by an accomplice of the Defendant and has failed to show economic loss to the complainant from the transaction involved in this charge, all of which render both the conviction and the application of the sentencing guidelines incorrect.

The prosecution has neither alleged nor proven facts sufficient to sustain a conviction under the charging statute, which is 18 U.S.C. Section 2314, because that statute requires that the money must "have been stolen" prior to the transfer.

The above factual summary and even a complete review of the transcript indicates clearly that the allegation is that Grable caused to be transmitted money from Texas to Montana based on fraudulent allegations that he owned a piece of oil field equipment (the 640 pumping unit) which he did not, in fact, own or have access to. It is a fact that the TWENTY-SIX THOUSAND DOLLARS ($26,000.00) was transferred from Texas to Montana and it is also a fact that Grable provided the 456 pumping unit (which was subsequently sold by the complainant for more than was paid for the 640 pumping unit) as a part of that transaction.

18 U.S.C. Section 2314 provided that whoever "transports, transmits, or transfers in interstate ...

commerce any ... money, of the value of FIVE THOUSAND DOLLARS ($5,000.00) or more, knowing the same to have been stolen, converted or taken by fraud" (emphasis supplied) is guilty of the criminal offense. The allegations in the Superseding Indictment (see Appendix, page 6) that the transfer of money is the criminal offense. The general purpose of the charging statute seems clearly to allow prosecution of people who transport stolen goods interstate.

In order to sustain a conviction under the charging statute, the prosecutor is required to prove, among other things, that (1) the money had been stolen prior to its transportation interstate and (2) that the Defendant transported or transferred the money interstate. The

prosecution has utterly failed in both aspects and, in fact, the innocence of the Defendant under that statute is clearly established in the record.

Beginning in 1957 in Loman v. United States, 243 F2d 327 (8 Cir., 1957), the Courts have universally ruled that 18 U.S.C. Section 2314 requires the money being transferred to be stolen prior to the transfer and not contemporaneously therewith. In the Loman case, the complainant was defrauded of the sum of FIVE THOUSAND DOLLARS ($5,000.00) which he obtained by redeeming some government bonds in Overland Park, Kansas, for the purpose of paying the money to an accomplice of the Defendant. The complainant then transported the money from Overland Park, Kansas, to Kansas City, Missouri, and delivered the money in

the state of Missouri. Those facts are virtually identical to the facts at hand where the funds were transmitted by the complainant from Texas to Montana. The Court in Loman reversed the conviction, stating as follows:

> "To constitute the offense the property transported in interstate commerce must have been stolen property and it must have been of that character before it was transported in interstate commerce." (emphasis supplied).

In the present case, the money was obviously not stolen, if ever, until it was received by the Defendant which clearly occurred in Montana, and the record contains no evidence of, nor does the Superseding Indictment itself allege, that the money subsequently moved interstate.

Similarly, in United States v.

Mercer, 133 F.Supp. (N.D. Cal., 1955), proof was presented that the alleged victim had taken money from her San Francisco, California, account and transported the same to Phoenix, Arizona, to turn over to the Defendants. The Court ruled that there was no violation of 18 U.S.C. Section 2314 because the money was not taken until it was turned over to the Defendants in Phoenix, Arizona. Again, the transfer of funds from Texas to Montana is identical in all material respects to that ruling.

The Fifth Circuit Court recognized the principle of the Mercer and Franklin cases in *dicta* in United States v. De La Barra, 447 F2d 193 (5 Cir., 1971), and cited Loman with approval, stating "an important element of the crime (under 18 U.S.C.

2314) is that the money had been stolen or taken by fraud at the time it was transported." Obviously, the money in the present case was not transported after being stolen and, even if the money were stolen as alleged, the theft certainly could not occur until the money arrived in Red Lodge, Montana.

Also in accord with these principles is United States v. Franklin, 586 F2d 560 (5th Cir., 1979), wherein the Court cited United States v. Roselli, 432 F2d 879, *cert. denied*, 401 US 924, 91 S.Ct. 883, 27 L.Ed. 2d 828 (9th Cir., 1971), with approval for the proposition that the purpose of 18 U.S.C. 2314 is to suppress movement of the fruits of theft and fraud in order to control the theft and fraud themselves. The

Court additionally stated that it was a requirement that the prosecutor show that the goods were stolen and the fact that they were transported interstate. Obviously, there was no evidence presented in the present case that there was any interstate shipment of stolen money.

In United States v. Judd, 889 F2d 1410 (5th Cir., 1989), *cert. denied* 110 S.Ct. 1494, 494 US 1036, 108 L.Ed. 2d 629 (5th Cir., 1989), this Court again affirmed the principle of all of the prior authority herein and stated that 18 U.S.C. 2314 requires proof by the government that the goods were stolen, converted or taken by fraud and that they were transported interstate. Obviously, the interstate transportation of goods prior to the theft is not sufficient, since the

transportation would then not be a transportation of stolen goods.

Similarly, the Fifth Circuit ruled in United States v. Scoratow, 434 F2d 1288 (5th Cir., 1970), that fraudulently obtained funds must be transported interstate for there to be a violation of 18 U.S.C. 2314. This determination in Scoratow was *dicta*, since the prosecution was commenced under the second paragraph of 18 U.S.C. 2314, but specifically holds that the second paragraph is a distinctly different crime from the first paragraph of Section 2314. This leads to the second portion of the Defendant's argument which is that the requirement of the charging section, as read by the Honorable Lucius D. Bunton, III and as it appears in the statute, requires that the Defendant

did "transmit in interstate commerce" certain money. While this argument appears to be one of first impression, the exact language of the first paragraph of 18 U.S.C. 2314 indicates, contrary to argument raised by government counsel, that the Defendant must himself (or, obviously, through an accomplice) transport, transmit or transfer the money in interstate commerce.

Obviously, the Defendant herein is not accused of having transported the money but merely of having received the money (after it was transported to Montana), an action which occurred clearly within the confines of the state of Montana.

Finally, it is worth noting that the cases cited herein deal with situations where people were actually

defrauded and lost money. No case has been found by counsel where there was a conviction because the wrong goods but goods of equal or greater value were delivered in the place of the goods for which the parties contracted. This makes it particularly difficult to find a criminal offense at all in the circumstances involved in this charge.

According to James D. Sumrall, the owner and operator of WesTex Gear Incorporated and the complainant herein, the Defendant sold a piece of oil field equipment generally described as a "640 pumping unit" at a price of TWENTY-SIX THOUSAND DOLLARS ($26,000.00). Transcript, 1-24; 1-25. The complainant did receive a pumping unit, but not the one for which he had contracted. He actually received a 456 pumping unit instead of the 640 pumping unit. Transcript 1-29, l. 6.

Sumrall contacted the Defendant and complained about the wrong unit having been sent (see Transcript, 1-30) but, with full knowledge that it was the wrong unit, he unloaded the 456 pumping unit, (Transcript, 1-30), which he later for $27,500 (Transcript, 1-43).

The facts become somewhat more confusing because Sumrall also testified that he actually purchased the 456 unit from the Defendant subsequent to its delivery, the clear fact is that the unit was, according to the complainant's own testimony, delivered in lieu of the 640 pumping unit and sold by the complainant for more than he paid for the 640 unit. When questioned about the acceptance of the 456 unit, the complainant testified as follows:

"Q: Did you at some time agree to go ahead and purchase the 456?

"A: Well, rather than the trucking company [*sic*] to haul it back I told him I would accept it, and I went ahead and

unloaded, off-loaded the equipment." (Transcript, 1-30, l. 14)

He went on to testify as follows:

"Q: On September 4 of 1991 that you were going to buy a 456 pumping unit and wire Grable 19,000 some odd dollars; is that right?

"A: That's what the document states.

"Q: That isn't right, is it? You had already bought that pumping unit?

"A: That's right.

"Q: It was already in your inventory, and you had used the $26,000 to buy

that particular pumping unit, hadn't you, sir?

"A: That is the basics of what happened, yes."

(Transcript, 1-42, 1-43, l. 23-8)

This testimony clearly establishes that the Defendant purchased the 456 unit for the $26,000 in question in this case and that the 456 unit had a value of $19,000, so the economic loss to the complainant, if any, would be $7,000 which would result in 4 points under Section 2F1.1(b) of the guidelines which should be added to the base level of 4, with a resultant sentencing level of 8 under the guidelines and a sentence of 4 to 10 months.

CONCLUSION

The conviction herein should be reversed because the decision of the Fifth Circuit is in conflict with other decisions of various circuit courts, including decisions of the Fifth Circuit itself. Furthermore, the sentencing should be corrected to reflect that there was no monetary loss to the complainant and, therefore the enhancement to the sentence should be zero.

We respectfully submit that Certiorari should issue.

RESPECTFULLY SUBMITTED

GEORGE T. RADOVICH
RADOVICH LAW FIRM
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Billings, MT
59105

BY:_____
GEORGE T. RADOVICH

App. 1

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-8286

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

WILLIAM A. GRABLE,

Defendant-Appellant.

Appeal from the United States District Court for the Western District of Texas

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(M-92-CR-66)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:

William Grable appeals his conviction of, and sentence for, interstate transportation of money by

fraud, in violation of 18 U.S.C. Section 2314. We affirm the conviction, vacate the sentence, and remand for resentencing.

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*Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

App. 3

I.

Grable was convicted by a jury of interstate transportation of money by fraud (causing a wire transfer of $26,000.00 by fraudulent inducement). He received a 21-month term of incarceration, a 3-year term of supervised release, a $50 special assessment, and a restitution order of $26,000. He objected to the presentence investigation report ("PSR"), alleging inter alia, that paragraphs 6 through 9 lacked a minimum indicium of reliability and involved conduct unrelated to the instant offense.

Grable reurged his objection at sentencing. The district court sustained his objections as to paragraphs 6, 7, and 8 but denied them as to paragraph 9. Paragraphs 6, 7,

and 8, which the district court explicitly stated it would not consider, set forth allegations of other fraudulent acts by Grable, whereby he allegedly fleeced three other individuals in various oilfield transactions. Paragraph 9, which the district court did consider, detailed the aggregate amount of loss pertaining to the conduct outlined in paragraphs 6, 7, and 8.

II.

A.

Grable contends that there is insufficient evidence to support his conviction. He did not reurge his motion for a judgment of acquittal following the close of all the evidence, so the evidence is reviewed to determine whether there was "plain error" or "a manifest miscarriage of

justice." A miscarriage exists "only if the record is devoid of evidence pointing to "guilt" or if the evidence on a key element is "so tenuous that a conviction would be shocking." United States v. Pierre, 958 F.2d 1304, 1310 (5th Cir.), cert. denied, 113 S.Ct. 280 (1992) (internal quotations and citations omitted).

The evidence is viewed in a light most favorable to the jury's verdict, including all reasonable inferences and credibility choices. Id. To support a conviction under Section 2314, the government must prove beyond a reasonable doubt that a defendant (1) transferred or caused to be transferred across state lines (2) monies valued at $5,000 or more (3) with knowledge that such monies had been stolen, converted, or fraudulently obtained. United

States v. Judd, 889 F.2d 1410, 1417 (5th Cir. 1989), cert. denied, 494 U.S. 1036 (1990); United States v. Vontsteen, 872 F.2d 626, 630 (5th Cir. 1989), cert. denied, 498 U.S. 1074 (1991).

Grable contends that the government failed to prove that the monies constituting the $26,000 wire transfer were stolen prior to the transfer from Texas to Montana and that the government failed to prove that Grable himself transported or transferred the money interstate. Both arguments fail.

To prove that Grable transferred the monies, the government must show only that Grable caused the money to be transferred, not that he transferred it personally. United States v. Poole, 557 F.2d 531, 534 (5th Cir. 1977).

Trial testimony indicates that Grable contacted the victim, James Sumrall, in August 1991 and told him that he (Grable) had a model 640 pumping unit, serial number T-36F-144-4L-1896, that he would ship to Sumrall if Sumrall would wire $26,000 to his (Grable's) bank account in Montana. Sumrall wired the money but never received anything.

Sumrall testified that Grable did not return any of the $26,000. Additionally, a representative of American Manufacturing Company ("AMC"), the company that had manufactured the unit, testified that it did not manufacture any model 640 pumping units with the serial number 1896. It did manufacture a model 912 pumping unit with the serial number 1896, but that unit was shipped to Peru. The evidence

shows that neither "plain error" nor a "manifest miscarriage of justice" occurred.

Grable's argument that there was insufficient evidence to conclude that the money was stolen prior to transfer also fails, as Section 2314 contains no such requirement. The government need prove only fraudulent inducement, and the fraud is deemed completed when the monies cross state lines. See Poole, 557 F.2d at 534-35; United States v. Stouffer, 986 F.2d 916, 923 (5th Cir. 1993).

B.

Grable contends that the district erred in calculating the amount of loss used to determine his offense level for sentencing purposes. The application of the sentencing guidelines is a question of law subject to de novo

review. United States v. Otero, 868 F.2d 1412, 1414 (5th Cir. 1989). A sentence must be reversed if it is imposed through a misapplication of the law. United States v. Mourning, 914 F.2d 699, 704 (5th Cir. 1990). The calculation of the amount of loss is a factual finding, reviewed for clear error. United States v. Wimbish, 980 F.2d 312, 313 (5th Cir. 1992), cert. denied, 113 S. Ct. 2365 (1993). If a factual finding is plausible in light of the record as a whole, it is not clearly erroneous. United States v. Watson, 966 F.2d 161, 162 (5th Cir. 1992).

Grable's base offense level is six. U.S.C.G. Section 2F1.1(a). The PSR recommended a six-level increase, asserting that the total loss was more than $70,000, based upon information

relating to alleged losses from other transactions involving other individuals. The PSR also recommended an additional two-level increase, asserting that the scheme to defraud involved more than one victim, relying upon the same PSR information relating to alleged losses from other transactions involving other victims.

Grable objected to the calculation of his offense level and the calculation of the amount of loss. He reurged his objection at sentencing.

The district court specifically stated that it would not consider the information relating to alleged losses from other transactions involving other victims as detailed in paragraphs 6-8 of the PSR. The district court stated, however, that it believed "that the proper offense level (was) 14."

The district court clearly erred, given its explicit statement that it would not consider the allegations of other losses. The amount of the loss from the offense of conviction is the $26,000 Sumrall wired to Grable. Therefore, the proper offense level would be 10, i.e., a base offense level of six and a four-level increase because loss was more than $20,000 but less than $40,000. See U.S.S.G. Section 2F.1(b)(1)(E0, (F). Grable specifically did not object to his criminal history category of II. The sentencing table thus yields a guideline range of 8-14 months. As the district court's imposition of a 21-month sentence was an improper application of the guidelines, we vacate the sentence.

The judgment of conviction is

AFFIRMED; and the judgment of sentence is VACATED and REMANDED for resentencing.

App. 13

UNITED STATES DISTRICT COURT
Western District of Texas
MIDLAND/ODESSA DIVISION

UNITED STATES OF AMERICA

Case Number MO-92-CR-066

v.

WILLIAM A. GRABLE
Defendant.

RE-SENTENCING
JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On
or After November 1, 1987)

The defendant, WILLIAM A. GRABLE, was represented by H. Thomas Hirsch.

The defendant was found guilty on count(s) one of the superceding indictment by a jury verdict on January 20, 1993, after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Date of Offense	Count Number
18 USC 2314	Interstate Transportation of Money by Fraud	August 15, 1991	One (1)

As pronounced on February 28, 1994, at the re-sentencing ordered by the Fifth Circuit U.S. Court of Appeals

and issued as Mandate on February 3, 1994, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $50.00 for count(s) one of the superseding indictment, which shall be due immediately. Said special assessment shall be made to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 28th day of FEBRUARY, 1994.

LUCIUS D. BUNTON
Senior United States
District Judge

Defendant's SSAN: 520-42-1627
Defendant's Date of Birth: April 6, 1940
Defendant's address: Post Office Box 214, Joliet, Montana 59041

Defendant: WILLIAM A. GRABLE
Case Number: MO-92-CR-066

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of fourteen 14 months.

The Court makes the following recommendations to the Bureau of Prisons: A Federal Correctional Institution in the state of Washington OR a Federal Correctional Institution nearest the state of Montana is recommended as the place of incarceration.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons. The defendant shall contact the **UNITED STATES MARSHAL SERVICE, MIDLAND, TEXAS,** not later than 10:00 a.m. on April 11, 1994, to ascertain to which institution he shall report and shall report as directed.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

_____
United States Marshal

By:_____
Deputy Marshal

Defendant: WILLIAM A. GRABLE
Case Number: MO-92-CR-066

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

X If ordered to the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

X If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.

X The defendant shall not own or possess a firearm or destructive device.

X The defendant shall abide by the standard conditions of probation and supervised release recommended by the Sentencing Commission and amended by the United States District Judge for the Western District of Texas dated May 6, 1991.

X The defendant is required to provide the United States Probation Officer access to any requested financial information.

X For any unpaid balance of restitution remaining at the commencement of the term of supervised release, the defendant shall make monthly installment payments as directed by the United States Probation Office.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
3) The defendant shall answer truthfully all inquiries by the probation officer and follow the

instructions of the probation officer.

4) The defendant shall support his or her dependents and meet other family responsibilities.

5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.

8) The defendant shall not frequent place where controlled substances are illegally sold, used, distributed, or administered.

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plan view by the probation officer.

11) The defendant shall notify the probation officer within seventy-

two hours of being arrested or questioned by a law enforcement officer.

12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

14) The defendant shall not use or possess methadone for treatment purposes, or in any manner, shape or form, <u>without express authority of the court</u>.

Defendant: WILLIAM A. GRABLE
Case Number: MO-92-CR-066

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution to the following persons in the following amounts:

Name of Payee	Amount of Restitution
WES-TEX GEAR Post Office Box 2117 Midland, Texas 79702	$26,000

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full **IMMEDIATELY**.

For any unpaid balance of restitution that remains at the commencement of the term of supervised release, the defendant shall make monthly installment payments as directed by the United States Probation Office.

Any payment shall be divided proportionately among the payees named unless otherwise specified here:

Defendant: WILLIAM A. GRABLE
Case Number: MO-92-CR-066

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report **EXCEPT the Court will not consider Paragraphs 6, 7, and 8 of the Presentence Report in the determination of the offense level**.

Guideline Range Determined by the Court:

Total Offense Level:	10
Criminal History Category:	II
Imprisonment Range:	8 months to 14 months
Supervised Release Range:	2 to 3 years
Fine Range:	$1,000 to $10,000
Restitution:	$26,000

The fine is waived or is below the guideline range because of the defendant's inability to pay a fine in addition to the restitution.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.